

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-1302

B
P/S

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 75 - 1302

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

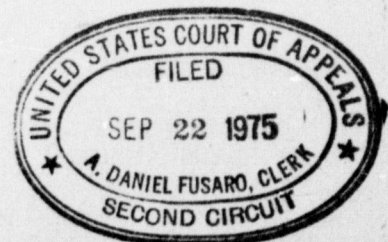
JACK GALLO,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

DEFENDANT-APPELLANT'S APPENDIX

GUSTAVE H. NEWMAN
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PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

THE UNITED STATES)	
)	
vs.)	No. 74 CR 822
)	
JACK GALLO)	

Proceedings

12-26-74	Before MISHLER, CH.J. - Indictment filed and ordered sealed by the Court - Bench warrant ordered.
1- 8-75	By JUDD, J. - Order filed that above indictment be opened for purpose of the U.S.A. making reproductions, and is to be resealed upon completions of duplications, etc.
1- 8-75	Bench warrant issued.
1- 9-75	Before JUDD, J. - Case called - Indictment ordered unsealed - deft. produced in Court on bench warrant - counsel present - deft. arraigned and enters a plea of not guilty - bail set at \$25,000.00 P.R. Bond - case adjd. to 1/29/75 at 2:00 P.M. for conference.
1- 8-75	Notice of appearance filed.
1- 8-75	Bench warrant ret'd. and filed - executed.
1-29-75	Before JUDD, J. - Case called - deft. and counsel M. Washor present - conference held and concluded - case adjd. to April 21, 1975 at 10:00 A.M. for trial.

2-13-75 Magistrate's filed 75 M 31 inserted into CR file.

2-18-75 Before JUDD, J. - Case called - deft. and counsel M. Washor present - deft's application to extend bail limits to Acapulco - motion granted on consent.

2-27-75 Before JUDD, J. - Case called - deft. and counsel Michael Washor present - deft's motion for extension of bail limits to California for 30 days - motion granted.

4-21-75 Before JUDD, J. - Case called - adjd. to 5/27/75 at 10:00 A.M. for trial.

5- 9-75 Before JUDD, J. - Case called - suppression hearing adjd. to 5/15/75 at 2:00 P.M.

5-15-75 Before JUDD, J. - Case called - adjd. to 5/27/75 for trial.

5-27-75 Before JUDD, J. - Case called - Marked ready and passed to May 29, 1975 at 2:00 P.M. for trial.

5-29-75 Before JUDD, J. - Case called & adjd. to June 2, 1975 for trial.

6- 2-75 Before JUDD, J. - Case called - deft and counsel present - trial ordered and begun - jurors selected and sworn - gov't opens - deft. waives opening - trial cont'd. to 6/3/75 at 10:00 A.M.

6- 3-75 Before JUDD, J. - Case called - deft. and counsel M. Washor present - trial resumed - trial cont'd. to June 4, 1975 at 10:00 am.m

6- 4-75 Before JUDD, J. - Case called - deft. and counsel M. Washor present - trial resumed - trial cont'd. to June 5, 1975.

6- 5-75 Before JUDD, J. - Case called - deft. and counsel present - trial resumed - govt. rests - deft's motion to dismiss argued - motion denied - deft. rests - deft. sums up - govt. sums up - Judge charges jury - Order of Sustenance filed - Marshals sworn - alternates discharged - jury returns at 7:15 P.M. and renders a verdict of guilty on counts 1, 2, 4 to 8 incl. and not guilty on counts 3 and 9 - jury polled - trial concluded - jury discharged - govt's motion to increase in bail - motion granted - bail set at \$15,000 surety to be posted by 3:00 P.M. on June 6, 1975 - adjd. without date for sentencing.

6- 5-75 By JUDD, J. - Order of sustenance filed (Lunch).

6- 5-75 Three stenographers transcripts filed (pgs. 1 to 497a).

6- 5-75 Govt's Requests to Charge filed.

6- 6-75 Before JUDD, J. - Case called - deft. and counsel Leon Washor present - deft's motion to extension of bail limits to California - motion argued - motion granted.

6-13-75 Stenographers Transcript dated 6/5/75 filed.

7- 3-75 Stenographers transcript filed dated June 5, 1975 (pgs. 606 to 646).

8- 1-75 Before JUDD, J. - Case called - Deft. and counsel present - Deft's motion to set aside verdict - motion denied - deft. sentenced to imprisonment for a period of 1 years to run concurrent to counts 4, 5, 6 - deft. sentenced to 5 years on remaining counts 1, 2, 7 and 8 suspended and the deft. placed on probation for 5 years after release from sentenced (sic) imposed on counts 4, 5 and 6 - deft. fined \$2,500.00 on counts 1 and 2 to run concurrent-bail cont'd pending appeal - deft. advised of right to appeal.

8- 1-75 Judgment and Commitment and Order of Probation
filed - certified copies to Probation and
Marshal.

8- 8-75 Notice of Appeal filed.

8- 8-75 Docket entries and duplicate of Notice mailed
to C of A.

8-18-75 Certified copy of Order received from court of
appeals and filed that record be docketed on
or before 8/22/75.

INDICTMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

-against-

No. 74 CR 822

JACK GALLO,

Defendant.

-----X

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 1st day of March, 1973, within the Eastern District of New York, the defendant JACK GALLO did wilfully and unlawfully receive and have in his possession 3 Air-Transport Association airline tickets numbered 8211-455-321, 8211-455-322 and 8211-455-323 having a value in excess of One Hundred Dollars (\$100), which goods had been stolen from Wings and Wheels Express Inc. while moving as a part of and constituting an interstate shipment of freight from Tennessee to New York, the defendant JACK GALLO knowing the same to have been stolen.

(Title 18, United States Code, §659).

COUNT TWO

On or about the 24th day of March, 1973, within the

Eastern District of New York, the defendant JACK GALLO did wilfully and unlawfully receive and have in his possession approximately 4 Pan American airline tickets numberes 4400-603-317, 4400-603-318, 4400-603-319 and 4400-603-320 having a value in excess of One Hundred Dollars (\$100), which goods had been stolen from Pan American World Airways, Inc. while moving as a part of and constituting an interstate shipment of freight from New York to Trinidad, the defendant JACK GALLO knowing the same to have been stolen.
(Title 18, United States Code, §659).

COUNT THREE

On or about the 5th day of April, 1973, within the Eastern District of New York, the defendant JACK GALLO did wilfully and unlawfully receive and have in his possession approximately 4 Pan American airline tickets numbered 4400-602-727, 4400-602-728, 4400-602-729 and 4400-602-730 having a value in excess of One Hundred Dollars (\$100), which goods had been stolen from Pan American World Airways while moving as a part of and constituting an interstate shipment of freight from New York to Trinidad, the defendant JACK GALLO knowing the same to have been stolen.
(Title 18, United States Code, §659).

COUNT FOUR

On or about the 23rd day of May, 1973, within the Eastern District of New York, the defendant JACK GALLO did wilfully and unlawfully receive and have in his possession approximately 2 Air-Transport Association airline tickets numbered 8408-242-215 and 8408-242-216 having a value in excess of One Hundred Dollars (\$100), which goods had been stolen from Wings and Wheels Express, Inc. while moving as a part of and constituting an interstate shipment of freight from Tennessee to New Jersey, the defendant JACK GALLO knowing the same to have been stolen. (Title 18, United States Code, §659).

COUNT FIVE

On or about the 3rd day of June, 1973, within the Eastern District of New York, the defendant JACK GALLO did wilfully and unlawfully receive and have in his possession approximately 2 Pan American airline tickets numbered 4201-389-227 and 4201-389-228 having a value in excess of One Hundred Dollars (\$100), which goods had been stolen from Pan American World Airways while moving as a part of and constituting an interstate shipment of freight from New York to Los Angeles, the defendant JACK GALLO knowing the same to have been stolen. (Title 18, United States Code, §659).

COUNT SIX

On or about the 3rd day of June, 1973, within the Eastern District of New York, the defendant JACK GALLO did wilfully and unlawfully receive and have in his possession approximately 2 Pan American airline tickets numbered 4400-602-860 and 4400-602-861 having a value in excess of One Hundred Dollars (\$100), which goods had been stolen from Pan American World Airways while moving as a part of and constituting and (sic) interstate shipment of freight from New York to Trinidad, the defendant JACK GALLO knowing the same to have been stolen.

(Title 18, United States Code, §659).

COUNT SEVEN

On or about the 6th day of June, 1973, within the Eastern District of New York, the defendant JACK GALLO did wilfully and unlawfully receive and have in his possession approximately 2 Air-Transport Association airline tickets numbered 8203-865-952 and 8213-865-953 having a value in excess of One Hundred Dollars (\$100), which goods had been stolen from Wings and Wheels Express, Inc. while moving as a part of and constituting an interstate shipment of freight from Tennessee to New Jersey, the defendant JACK GALLO knowing the same to have been stolen.

(Title 18, United States Code, §659).

COUNT EIGHT

On or about the 11th day of July, 1973, within the Eastern District of New York, the defendant JACK GALLO did wilfully and unlawfully receive and have in his possession approximately 2 Air-Transport Association airline tickets numbered 8213-865-514 and 8213-865-515 having a value in excess of One Hundred Dollars (\$100), which goods had been stolen from Wings and Wheels Express, Inc. while moving as part of and constituting an interstate shipment of freight from Tennessee to New Jersey, the defendant JACK GALLO knowing the same to have been stolen. (Tlt 18, United States Code, §659).

COUNT NINE

On or about the 21st day of August, 1973, within the Eastern District of New York, the defendant JACK GALLO did wilfully and unlawfully receive and have in his possession approximately 6 Pan American airline tickets numbered 4400-602-862, 4400-602-863, 4400-602-864, 4400-602-865, 4400-602-866 and 4400-602-867, having a value in excess of One Hundred Dollars (\$100), which goods had been stolen from Pan American World Airways, Inc. while moving as a part of and constituting an interstate shipment of freight from New York to Trinidad, the defendant

JACK GALLO knowing the same to have been stolen.

(Title 18, United States Code, §659).

A TRUE BILL

FOREMAN

/s/ DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

1 THE COURT: Then they are not tied up with Gallo.

2 MR. CUNNINGHAM: Not so fast.

3 However, samples of handwriting were taken from
4 Mr. Gallo and Mr. Gallo's handwriting showed up on the
5 four samples we have here as well as the other two
6 mysterious disappearances.

7 THE COURT: I don't know whether you need that
8 here.

9 Deaton goes pretty far, Mr. Washor.

10 MR. WASHOR: I understand that. I am familiar
11 with the concept of that case.

12 However, I still think it is a discretionary act
13 for the Court to rule upon and I will try to impose
14 upon your exercising your discretion in favor of the
15 defendant.

16 The additional factors of identification which
17 do not pertain to the tickets in question, quite
18 obviously I think, would have an impact upon the jury
19 most favorable to the Government.

20 THE COURT: If it is relevant then the Government
21 is entitled to get it in.

22 MR. WASHOR: The question of relevancy, materiality
23 and admissibility, all come down to what I believe is
24 the following circumstance: They could properly infer
25 from the handwriting analysis of the tickets in question

3 1 that it was Gallo's handwriting.

2 It would seem to be a violation of the jury's
3 province if they should determine that the tickets
4 in question were not written by him, but other tickets
5 which he is not charged with, were written by him.

6 So, the Government might be doing indirectly
7 what they cannot do directly by law.

8 THE COURT: I suppose it is Mr. Cunningham's
9 theory that he has the burden of proving sentence
10 beyond a reasonable doubt and the more mysterious
11 disappearances Mr. Gallo is connected with the stronger ---

12 MR. WASHOR: I would be hard-pressed if he were
13 to charge such a conspiracy aspect with such broadness.

14 The Government selected the nature and form of
15 the crime for which we are on trial and I hate to go
16 beyond what is contained in the indictment, beyond what
17 has been produced, beyond the quality --

18 THE COURT: The quality could have been better.

19 MR. WASHOR: I will argue that at the proper time.
20 I am looking for the legal position most favorable to
21 the Government.

22 It would be for the jury to draw an inference
23 of inculcation against Mr. Gallo for crimes charged.

24 I agree that the more sets associated or bearing
25 on the transaction with which he is charged, would be

4 1 favorable to the Government, he is not charged with
2 theft but possession.

3 THE COURT: Possession cases are very difficult
4 to prove for the Government.

5 MR. WASHOR: Let's assume the other two groups
6 of thefts were in fact written by Mr. Callo for purposes
7 of this argument.

8 Since the Government isn't in a position to
9 prove where they were written they don't have venue or
10 jurisdiction in the Eastern District. Assume they were
11 written in Manhattan or Boston.

12 THE COURT: I don't think venue has anything to
13 do with the Deaton rule.

14 Do you have any specific cases on this subject
15 other than Deaton?

16 MR. CUNNINGHAM: No.

17 The reason added counts were not brought in in
18 the indictment was that there was no evidence that they
19 were written in the Eastern District.

20 We have the jurisdiction but not the venue.

21 MR. WASHOR: If they couldn't indict him for it,
22 they knew that beforehand, then, to introduce the
23 evidence with a view toward finding guilt anyway, seems
24 to be to me, to be doing indirectly what they can't
25 do directly by law.

5 1 THE COURT: I would have to tell the jury that
2 he is not charged with the other tickets but they can
3 consider it only in connection with his knowledge that
4 these tickets were stolen.

5 I think, having in mind that the knowledge of
6 theft is a matter of state of mind which has to come
7 from circumstantial evidence to a large extent, the
8 Government should be permitted to do it.

9 MR. WASHOR: The only other problem I foresee
10 is that there is going to be testimony as to the specific
11 airline tickets found to be in his handwriting outside
12 the indictment.

13 MR. CUNNINGHAM: I'm sorry?

14 THE COURT: Your handwriting expert is right
15 after Rigolizzo?

16 MR. CUNNINGHAM: Yes.

17 MR. WASHOR: Is he going to testify to the
18 specific other airline tickets allegedly found to be
19 in Jack Gallo's handwriting?

20 THE COURT: I presume he must or it's not
21 pertinent.

22 MR. CUNNINGHAM: We are going to be testifying
23 as to each one of these tickets here with specificity.

24 He is also going to say that he examined 2,000,
25 4,000 other tickets and of those tickets, he found 600

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to be in the handwriting identical to Mr. Gallo's.

MR...WASHOR: Which 600 and where is my right
of confrontation?

(Continued on next page.)

/ap
an/rl

1 MR. CUNNINGHAM: We already told you there was
2 600.

3 THE COURT: Have you made those available for
4 Mr. Washor before today?

5 MR. CUNNINGHAM: Yes.

6 MR. WASHOR: I would like to know which 600
7 he is talking about?

8 MR. CUNNINGHAM: I am sorry, your Honor.
9 There is only 400.

10 THE COURT: Show me what information you gave
11 Mr. Washor previously.

12 MR. WASHOR: I have the report of the handwriting
13 expert. That I do have.

14 To be frank, I spent all the necessary time
15 analyzing it with reference to specific questions in
16 the indictment as to the airline tickets mentioned in
17 each count.

18 (Documents shown to Court.)

19 THE COURT: You are not going to put this report
20 into evidence with all these other references to
21 indictments, are you?

22 MR. CUNNINGHAM: No, your Honor.

23 MR. WASHOR: It is not as simple as looking at
24 the list. There are findings of facts and conclusions
25 by the experts that talk about different groups, differ-

2 1 analyses, some of the tickets belonging to others,
2 some of the tickets having been in the handwriting of
3 the defendant Gallo, and to make that kind of
4 differentiation is going to go into a long and protracted
5 examination which is not pertinent to the issues before
6 this Court.

7 THE COURT: You have just Gallo's writings
8 consisting of specimens in a number of cases.

9 How are you going to prove that?

10 MR. CUNNINGHAM: Mr. Rigolizzo took the specimens
11 and they were compared with the questioned documents.

12 THE COURT: They are not based on testimony
13 of someone in the Grand Jury?

14 MR. WASHOI: They were specimens given, Judge.

15 MR. CUNNINGHAM: If I might explain what was
16 done here.

17 There are six thefts, four handwritings are
18 shown, and the Government has broken them down into
19 Class 1, 2, 3 and 4. Then we took the tickets within
20 those four classes as they appeared and surfaced.
21 The testimony will be that Class 1 is Mr. Jack Gallo
22 and the witness can say that Jack Gallo wrote all of
23 the tickets delineated in class 1, which is some 400
24 airline tickets which came out of the six mysterious
25 disappearances or six thefts.

3 1 THE COURT: I do not want to have to listen to
2 cross-examination as to 400 tickets. I think you are
3 entitled to something more than the tickets in the tapes --

4 MR. WASHOR: I am not looking to take advantage
5 of a circumstance in any manner or form. I have
6 prepared my cross-examination of the expert. I am not
7 asking you to make a ruling dependent upon my preparation,
8 but I can be candid with the Court. I am prepared to
9 examine the expert relative to those tickets, the
10 handwriting analysis, the comparisons, his findings of
11 fact pertinent to those tickets in the indictment.

12 THE COURT: Do you have a handwriting expert?

13 MR. WASHOR: No.

14 Now I am placed in a position where this would
15 be admissible if you were to so rule where I think I
16 am obligated in defending Mr. Gallo in going through
17 all of the airline tickets.

18 THE COURT: Were they made available before this?
19 They could have been under Rule 16.

20 MR. CUNNINGHAM: They have had them all along.

21 THE COURT: Did Mr. Washor know about it?

22 MR. CUNNINGHAM: Yes, your Honor.

23 The first thing we gave to him was that fact.

24 (Indicating.)

25 MR. WASHOR: I know that there were many more

1 tickets. I am not asking you again to rule on my
2 position from the standpoint of only being prepared to
3 question the expert relative to the tickets in the
4 indictment. I can understand the Government's attempt
5 to get into evidence the other 400. They had means and
6 methods with which they could get that in other than to
7 indict a man on one count with one indictment and
8 introduce 399 others to prove the one count. That goes
9 against the grain --

10 MR. CUNNINGHAM: That may go against the grain --

11 THE COURT: The rule is that testimony of other
12 crimes is admissible if it is for some purpose other
13 than to prove bad character. This goes for the issue
14 of knowledge of theft which is a vital issue. You have
15 a legal issue as to whether the theft was something
16 under 659.

17 MR. WASHOR: You must also bear in mind the
18 thefts. They are talking about and attempting to
19 establish are not the thefts and or the losses, or the
20 mysterious disappearances of those quantities of tickets
21 forming the gravamen of the charges here. They are
22 independent.

23 THE COURT: Are most of these from other batches
24 or are some of them from this 400 batch?

25 MR. CUNNINGHAM: Agent?

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AGENT RIGOLIZZO: I didn't get the question.

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MR. CUNNINGHAM: Of the four thefts that had occurred, that we are talking about in this trial right now, there are additional tickets written by Mr. Gallo other than the ones for which he has been indicted?

6

AGENT RIGOLIZZO: Yes, 333.

7

THE COURT: I thought there were two thefts.

8

MR. CUNNINGHAM: Four.

9

MR. WASHOR: I have only heard testimony of two.

10

AGENT RIGOLIZZO: Two Pan Am thefts and two

11

A.T.C. thefts.

12

THE COURT: The one Wings and Wheels and the one

13

Pan American?

14

MR. CUNNINGHAM: No, one to Odyssey and one to

15

Gruenwald. As to Pan American, one was going to Port

16

of Spain, Trinidad and the other one to Los Angeles.

17

MR. WASHOR: With all due respect, unless I am

18

mistaken, what I understand the Government thus far to

19

have proved as to the bills of lading starting all the

20

way down South --

21

THE COURT: Yes.

22

MR. WASHOR: -- that there is no testimony of

23

any theft or loss.

24

MR. CUNNINGHAM: Well, a mysterious disappearance.

25

MR. WASHOR: I am only cognizant of two, your

6

1

Honor.

2

THE COURT: I think Mr. Cunningham is right.

3

There were two Pan American shipments and two Wings and Wheels shipments.

5

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7

8

MR. CUNNINGHAM: Government's Exhibit 1 in evidence is one theft. Government's Exhibit 2 in evidence is the second. Government's Exhibit 7 -- strike that.

9

10

THE COURT: There were two Pan Am and two Wings and Wheels.

11

12

MR. CUNNINGHAM: One to Odyssey and one to Gruenwald.

13

14

15

MR. WASHOR: May I ask where the loss relative to the Pan Am instance occurred. What has the Government proved as to that aspect?

16

17

18

19

20

THE COURT: Well, it was covered in Mr. Fitzgerald's testimony, wasn't it, that there were 4600 tickets going to the Port of Spain in Trinidad, part of which did not arrive, and there were I think 18,000 tickets going to Los Angeles, one carton of which did not arrive?

21

22

23

24

25

MR. CUNNINGHAM: Correct.

MR. WASHOR: I do not think there is any testimony as to the continuity of where they left, where they were missing or stolen from what building.

THE COURT: They do not have to be stolen in the

7 1 Eastern District.

2 MR. WASHOR: I understand that.

3 MR. CUNNINGHAM: I think that Mr. Fitzgerald
4 testified that they were going from Pan Am here --
5 from J.F.K. and going out there and they did not arrive.

6 When they did not arrive, he put out the black-
7 listing that we heard about.

8 MR. WASHOR: Be it as it may, that is only my
9 recollection.

10 THE COURT: I see the substance of your argument
11 and the fact that it may be something that is telling
12 evidence against the defendant, but I think under the
13 Deaton Rule, I am going to accept it.

14 MR. WASHOR: I respectfully accept.

15 MR. CUNNINGHAM: Thank you, your Honor.

16 THE COURT: Bring in the jury.

17 (Jury present.)

18 THE COURT: Ladies and gentlemen, we have taken
19 a little time that may save some sidebars later on.
20 Mr. Cunningham, you may call your next witness.

21 MR. CUNNINGHAM: The Government calls its next
22 witness, Mr. Michael Rigolizzo.

23 MICHAEL RIGOLIZZO, having been duly sworn
24 by the Clerk of the Court, testified as follows:

25 MR. WASHOR: Before the witness proceeds, I see

8 1 the expert is in Court. No offense intended, but I
2 would ask that he be excluded.

3 THE COURT: All right, can you find your way to
4 the witness room?

5 VOICE: Yes.

6 DIRECT EXAMINATION

7 BY MR. CUNNINGHAM:

8 Q By whom are you employed, Mr. Rigolizzo?

9 A The Federal Bureau of Investigation.

10 Q Were you so employed in 1973?

11 A Yes, I was.

12 Q And in 1973, the early part, did you have
13 occasion to investigate the theft of airline tickets?

14 A Yes, I did.

15 Q Will you please tell us the nature of your
16 investigation?

17 MR. WASHOR: I will object to that.

18 THE COURT: Well, you cannot tell us about
19 statements that anybody else made about Mr. Gallo,
20 but he can give us the overall picture.

21 Let me tell the jury now that Mr. Gallo now
22 is charged with possession, with knowledge that they
23 were stolen, these nine thefts of airline tickets.
24 Anything else that is received is not to charge with
25 Mr. Gallo with any other crime. It is to have some

Rigolizzo-direct

possible bearing on whether he in fact
tickets were stolen. You may answer now.

THE WITNESS: Can you repeat the question,
please?

Q Surely.

Can you tell us the general -- your general
involvement, how you became involved with the theft of airline
tickets?

A It was brought to my attention in approximately
June of 1963 that there were a number of thefts in the New
York, New Jersey area of interstate shipments concerning
airline tickets, and upon receipt of that information my
investigation began to uncover the details of the thefts.

Q How many thefts did you uncover?

A Six thefts.

Q Could you explain the six thefts to us?

A Well, there were three thefts from Pan American
Airlines at Kennedy Airport, one going from Kennedy to Port
of Spain, Trinidad --

Q The one going from Kennedy to Port of Spain,
Trinidad, is that one of the thefts involved here today?

A Yes.

Q Were there other thefts at John F. Kennedy?

A Yes, there was a theft from Kennedy Airport to

10

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Rigolizzo-direct

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Los Angeles.

3

Q Is that part -- some of the tickets that we have

4

here, were they part of that theft to Los Angeles?

5

A Yes, sir.

6

Q Was there a third theft involving Pan American?

7

A Yes, from Kennedy Airport to Fairbanks, Alaska.

8

Q Are any of the tickets here today involved in

9

that theft?

10

A No, sir.

11

Q You mentioned that there were three other thefts.

12

Would you tell us the nature of those.

13

A The other three thefts were Air Transportation

14

Association tickets printed in Nashville, Tennessee by

15

Rand McNally. The first one was from Nashville, Tennessee

16

to Gruenwald Travel Agency in New Jersey.

17

THE COURT: Are any of those tickets involved

18

here today?

19

A Yes.

20

Q What is the second one?

21

A From Nashville, Tennessee to Odyssey Travel

22

Agency in New Jersey.

23

Q Is that under consideration here today?

24

A Yes.

25

Q How about the third?

11

1

Rigolizzo-direct

2

A From Nashville, Tennessee to Bayonne, New

3

Jersey.

4

Q Are any tickets there involved here today?

5

A No, sir.

6

Q What was the total number of tickets that were

7

stolen from those six thefts?

8

A A little over 7,000 tickets.

9

Q Of those 7,000 tickets that were stolen, how

10

many have been recovered?

11

A I'd say about 1,500 to 2,000.

12

I'm sorry, did I say 1,500? What was my answer?

13

(Answer read.)

14

Q And those tickets came from the 1,500 to 2,000

15

tickets that were recovered from all six thefts?

16

A All six thefts.

17

Q Now, these tickets that have been recovered,

18

they have all been filled in and printed upon?

19

A Yes, sir.

20

Q They all had been completed?

21

A They all had been completed.

22

Q What would you do when you recovered these

23

tickets? What would be the normal procedure?

24

A We would attempt to identify the passenger

25

who used the tickets and upon identifying him, if I could then

12 1

Rigolizzo-direct

2 interview him and try to track down the ticket to its source.

3 Q Did you in fact interview all the individuals
4 who have testified here in this courtroom?

5 A No, sir. I do not believe I interviewed all
6 of them. Some appeared before the Grand Jury whom I did not
7 interview.

8 Q Did you have occasion to take handwriting
9 samples from Mr. Gallo?

10 A Yes, I did.

11 Q Did you tell him what you wished him to write?

12 A Yes.

13 A Of your taking of your samples from Mr. Gallo --
14 Well, perhaps you could explain to the ladies and gentlemen
15 of the jury how you took the samples.

16 A I supplied Mr. Gallo with paper and the paper
17 had a format which resembled an airline ticket in blank form
18 and I explained to Mr. Gallo exactly what I wanted him to
19 print in each respective space of the form.

20 Q Did you at any time ever show him any of the
21 airline tickets that you had recovered while he was filling
22 out your sample form?

23 A He may have seen the tickets from a distance
24 but he could not have seen what was written on the tickets.

25 Q Did you at any time give him any tickets to copy?

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Rigolizzo-direct

A No, sir.

Q Now, after you had taken these handwriting samples from Mr. Gallo what did you do with them, sir?

A I sent them to the F.B.I. Laboratory in Washington, D.C. for handwriting analysis.

Q You also sent the airline tickets that had been recovered for comparison purposes?

A That is correct.

Q Could you tell us roughly how many tickets came back as positive identification of Mr. Gallo?

A 427.

Q These were out of all six thefts?

A Yes.

MR. CUNNINGHAM: I have no further questions of this witness.

MR. WASHOR: I need just one minute.

THE COURT: Yes.

MR. WASHOR: I am missing something. Please bear with me.

(Pause.)

MR. WASHOR: Thank you, Judge. I apologize.

THE COURT: Go ahead.

(Continued on next page.)

1 Rigolizzo - cross

2 CROSS-EXAMINATION

3 BY MR. WASHOR (Cont'd):

4 Q Don't be smiling, Agent Rigolizzo. You saw
5 Mr. Gallo on several occasions; am I correct?

6 A Have I seen Mr. Gallo?

7 Q Yes.

8 A Yes, sir.

9 Q I'm talking about in the official capacity of
10 the handwriting?

11 A Yes, sir.

12 Q All right. You saw him here at the U. S. at-
13 torney's office?

14 A Yes, sir.

15 Q Am I correct?

16 A Yes, sir.

17 Q I believe it was Mr. Frank Sherrin, Francis
18 Sherrin, an assistant U. S. attorney?

19 A That's correct. Yes, sir.

20 Q He appeared at the request of the U. S. attorney's
21 office; am I correct?

22 A That's correct, sir.

23 Q All right. On how many occasions was he caused
24 to give handwriting specimens?

25 A Either two or three. I'm not quite sure, sir.

2 Rigolizzo - cross

Q Would it refresh your recollection if I suggested that it was three times?

A May very well be.

Q Maybe. Would it be fair to state voluntarily came into the U. S. attorney's office, he sat down with his lawyer present?

A He was there and his lawyer was present, that's correct.

Q And you were present?

A Yes, sir.

Q You spent at least on the first occasion about an hour, about?

A About an hour; that's correct.

Q Okay. And that you read certain language to Mr. Gallo? Mr. Gallo then wrote that down?

A That's correct, sir.

Q As a matter of fact, would it be fair to state that the forms, blank forms were given to Mr. Gallo?

A That's correct.

Q And in a sense you told him what to put down and where to put it in the forms?

A That's correct.

Q Before you now is a piece of paper. Does that purport to be similar to the forms given to Mr. Gallo?

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF NEW YORK

3 -----X

4 UNITED STATES OF AMERICA :

5 -against- :

6 JACK GALLO, :

7 Defendant. :

8 -----X

74 CR 822

9
10 United States Courthouse
11 Brooklyn, New York

12 June 5, 1975
13 2:00 o'clock P.M.

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16 B e f o r e :

17 HONORABLE ORRIN G. JUDD, U.S.D.J.
18

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20
21 HENRI LEGENDRE
22 ACTING OFFICIAL COURT REPORTER
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Appearances:

DAVID G. TRAGER, ESQ.,
United States Attorney
for the Eastern District of New York

BY: MYLES CUNNINGHAM, ESQ.,
Assistant United States Attorney

MICHAEL WORSHOR, ESQ.
Attorney for the Defendant.

1 THE COURT: I guess we are ready to proceed.

2 MR. CUNNINGHAM: Yes.

3 MR. WORSHOR: Yes, your Honor.

4 THE COURT: Mr. Cunningham, Mr. Worshor,
5 Mr. Gallo and primarily Mr. Eisner and ladies and
6 gentlemen of the jury. First, I'm sorry that your
7 luncheon was delayed, I hear it didn't get here until
8 quite late. If the weather outside is not good,
9 sometimes inside luncheons are delayed.

10 You have heard the evidence and arguments of
11 counsel, now it's my duty to give you the Court's
12 instructions as to the law that applies to the case.
13 I use a written form with various different parts so
14 as to be accurate as possible, so as to see that I
15 don't leave out anything, and the procedure I follow
16 is to first give the general principles that apply to
17 all criminal trials and the nature of the charges in
18 this case, and the specific rules of law that apply to
19 those charges; and then something about how to evaluate
20 the evidence; and a few comments on the evidence; and
21 finally something about how to reach a verdict.

22 In our adversary system of criminal justice,
23 we have two sets of counsel; the prosecutor's duty is
24 to do his best to present the Government's case; and
25 defense counsel's duty is to do his best to represent

1 his own client's interests.

2 I as the judge enforce the rules of evidence,
3 and you as the jury decide the truth or falsity of the
4 testimony and the inferences that can be drawn from it.

5 It is your duty as jurors to follow the law as
6 I give it in my instructions, and apply those rules of
7 law to the facts as you find them, but you are the
8 sole judges of the facts. You are to perform your
9 duty without bias or prejudice for or against any
10 party.

11 The law doesn't permit jurors to be governed by
12 sympathy or prejudice or public opinion. The law
13 presumes the defendant to be innocent of crime; and
14 permits nothing but legal evidence to be considered in
15 support of the charge. This presumption of innocence
16 is enough in itself to acquit a defendant, unless the
17 jurors are satisfied beyond a reasonable doubt of the
18 guilt of the defendant on a particular count from all
19 the evidence in the case.

20 I'll describe briefly what the law means by
21 reasonable doubt. It's partly self-explanatory.

22 A reasonable doubt is a doubt based on reason
23 and common sense. It may arise from the state of the
24 evidence or it may arise from the absence of evidence.
25 A reasonable doubt doesn't mean a doubt that a juror

1 picks on arbitrarily because he's reluctant to
2 perform an unpleasant task. It's rarely possible to
3 prove anything to an absolute certainty or beyond a
4 possible doubt, and the law doesn't require this.
5 What is sometimes said as a definition of a reasonable
6 doubt is that it requires a doubt such as would make
7 you hesitate to act in your own important affairs.
8 This proof beyond a reasonable doubt operates on the
9 whole case, doesn't mean that each bit of evidence
10 must be proved beyond a reasonable doubt. It means
11 that the sum total of the evidence must satisfy you
12 beyond a reasonable doubt as to each element of the
13 crime charged or else you must acquit, and I'll tell
14 you the elements later.

15 Finding a person to be guilty of a felony and
16 subjecting him to a criminal penalty is serious, and
17 you can consider this fact in deciding whether you
18 have a reasonable doubt.

19 Nevertheless, if you are convinced beyond a
20 reasonable doubt of a defendant's guilt, you should
21 find him guilty. There is a public interest both in
22 finding innocent people not guilty where there is a
23 reasonable doubt and finding them guilty where there
24 has been a violation of law proved.

25 An indictment is just a formal method of

1 accusing a defendant of a crime. It isn't evidence
2 of any kind against the accused, and the fact that
3 there is an indictment doesn't create any presumption
4 or inference of guilt. The defendant has pleaded not
5 guilty. And the indictment and the plea create the
6 issues which you must decide.

7
8 The law never imposes a duty upon a defendant
9 in a criminal case to produce any evidence or to
10 testify for himself, and the fact that the defendant
11 did not testify does not justify any inference with
12 respect to the facts. You mustn't talk about it in
13 the jury room as having any bearing on the decision.

14 I'm going to read you the indictment in this
15 case just so that you'll have the charges before you.
16 I'll read critical parts of it, you bear in mind this
17 is simply the charge. Count One says: On or about the
18 first day of March 1973, within the Eastern District
19 of New York, the defendant Jack Gallo did wilfully and
20 unlawfully receive and have in his possession three
21 Air-Transport Association airline tickets numbered
22 8211-455-321; 8211-455-322 and 8211-455-323 having a
23 value in excess of \$100, which goods had been stolen
24 from Wings and Wheels Express Inc. while moving as a
25 part of and constituting an interstate shipment of
freight from Tennessee to New York, the defendant Jack

1 Gallo knowing the same to have been stolen.

2 Count 2 is similar but he gives the date on or
3 about the 24th day of March 1973, within the Eastern
4 District of New York, the defendant Jack Gallo did
5 wilfully and unlawfully have in his possession
6 approximately four Pan Am American airline tickets
7 numbered 4400-603-317; 4400-603-318; 4400-603-319 and
8 4400-603-320 having a value in excess of \$100, which
9 goods had been stolen from Pan Am American World
10 Airways, Inc. while moving as a part of and constituting
11 an interstate shipment of freight from New York to
12 Trinidad, the defendant Jack Gallo knowing the same
13 to have been stolen.

14 Count 3 is similar, but refers to the date of
15 April 5, 1973, within the Eastern District of New York,
16 the defendant Jack Gallo did wilfully and unlawfully
17 receive and have in his possession approximately four
18 Pan American airline tickets numbered 4400-602-727;
19 4400-602-728; 4400-602-729 and 4400-602-730 having a
20 value in excess of \$100, which goods had been stolen
21 from Pan American World Airways while moving as a part
22 of and constituting an interstate shipment of freight
23 from New York to Trinidad, the defendant Jack Gallo
24 knowing the same to have been stolen.

25 Count 4 is similar but it has a date of May 23,

1 1973, within the Eastern District of New York the
2 Defendant Jack Gallo did wilfully and unlawfully
3 receive and have in his possession approximately two
4 Air-Transport Association airline tickets numbered
5 8408-242-215 and 8408-242-216, having a value in
6 excess of \$100 which goods had been stolen from Wings
7 and Wheels Express, Inc. while moving as a part of and
8 constituting an interstate shipment of freight from
9 Tennessee to New Jersey, the defendant Jack Gallo
10 knowing the same to have been stolen.

11 Count 5 is similar with the date on or about
12 the third day of June 1973, within the Eastern
13 District of New York, the defendant Jack Gallo did
14 wilfully and unlawfully receive and have in his
15 possession approximately two Pan American Airline
16 tickets numbered 4201-389-227 and 4201-389-228 having
17 a value in excess of \$100, which goods had been stolen
18 from Pan American World Airways while moving as a part
19 of and constituting an interstate shipment of freight
20 from New York to Los Angeles, the defendant Jack Gallo
21 knowing the same to have been stolen.

22 Count 6 is similar with the date June 3, 1973,
23 within the Eastern District of New York, the defendant
24 Jack Gallo did wilfully and unlawfully receive and
25 have in his possession approximately two Pan American

1 Airline tickets numbered 4400-602-860 and 4400-602-861,
2 having a value in excess of \$100, which goods had been
3 stolen from Pan American World Airways while moving as
4 a part and constituting an interstate shipment of
5 freight from New York to Trinidad, the defendant
6 Jack Gallo knowing the same to have been stolen.

7 Count 7 is similar but it has the date June 6,
8 1973, within the Eastern District of New York, the
9 defendant Jack Gallo did wilfully and unlawfully
10 receive and have in his possession approximately two
11 Air-Transport Association airline tickets numbered
12 8213-865-952 and 8213-865-953 having a value in
13 excess of \$100, which goods had been stolen from
14 Wings and Wheels Express, Inc. while moving as a part
15 of and constituting an interstate shipment of freight
16 from Tennessee to New Jersey, the defendant Jack
17 Gallo knowing the same to have been stolen.

18 Count 8 is similar with the date July 11,
19 within the Eastern District of New York, the defendant
20 Jack Gallo did wilfully and unlawfully receive and
21 have in his possession approximately two Air-Transport
22 Association airline tickets numbered 8213-865-514 and
23 8213-865-515 having a value in excess of \$100, which
24 goods had been stolen from Wings and Wheels Express,
25 Inc., while moving as a part of and constituting an

1 interstate shipment of freight from Tennessee to
2 New Jersey, the defendant Jack Gallo knowing the same
3 to have been stolen.

4 And finally Count 9 I'll read.

5 On or about the 21st day of August 1973,
6 within the Eastern District of New York, the defendant
7 Jack Gallo did wilfully and unlawfully receive and
8 have in his possession approximately six Pan American
9 airline tickets numbered 4400-602-862, 4400-602-863,
10 4400-602-864, 4400-602-865, 4400-602-866 and 4400-602-
11 867, having a value in excess of \$100, which goods
12 had been stolen from Pan American World Airways, Inc.,
13 while moving as a part of and constituting an inter-
14 state shipment of freight from New York to Trinidad,
15 the defendant Jack Gallo knowing the same to have been
16 stolen.

17 Apparently the indictment describes them all
18 as interstate shipment, whereas the shipments to
19 Trinidad were in fact foreign shipments, but the
20 statute applies to both, so I think the difference is
21 not material.

22 The law does not require that the date and
23 amounts in an indictment be exact. They can be
24 approximate as long as they properly inform the
25 defendant of enough so that he could defend intelligently.

1 You recall with respect to the date of August 21,
2 1973, in Count 9, the testimony of Mr. Truccio was
3 in fact he delivered the tickets before he went away
4 on his honeymoon on June 4th; so that the August 21
5 date in the indictment is probably wrong, but you can
6 find guilt on that count if the other matters are
7 established, if you believe that it was in Mr. Gallo's
8 possession on or shortly before June 4, 1973, according
9 to Mr. Truccio's testimony.

10 Now, the indictment charges a violation in
11 each count of Title 18 of the United States Code,
12 Section 659, which says: "Whoever steals or unlawfully
13 takes, carries away or conceals or by fraud or
14 deception obtains from any wagon, motor truck or other
15 vehicle, or from any tank or storage facility, station-
16 house, platform or depot or from any aircraft,
17 air terminal, airport, aircraft terminal or air
18 navigation facility with intent to convert to his own
19 use any goods or chattels moving as, or which are
20 part of or which constitute an interstate foreign
21 shipment of freight or other property; or whoever
22 buys or receives or has in his possession any such
23 goods or chattels, knowing the same to have been
24 stolen, shall be subject to fine or imprisonment."
25 And I don't tell you the terms of punishment, that's

1 something for the Court to consider on the basis of
2 more facts than we have here, if there is a verdict
3 of guilty on any of the counts.

4 In other to establish guilt of any of the counts,
5 the Government is supposed to prove five things which
6 we call elements of the crime. First, that there was
7 a stealing from one of the places described in the
8 statute. Primarily, I suppose here a motor truck,
9 storage facility or a depot. The interstate aspect
10 of a shipment continues until it reaches its
11 destination. So if you find that these airline tickets
12 were stolen while they were on a truck, or while they
13 were on a platform in a warehouse of a Wings and
14 Wheels, Inc. or PanAmerican, waiting to go to their
15 final destination, you may find that they were stolen
16 from one of the facilities described, one of the
17 places described in the statute.

18 Second, that the goods were at the time moving
19 as a part of interstate or foreign shipment, and if
20 they had not yet reached their destination you may
21 find that they were so moving.

22 Third, that the defendant had the goods in his
23 possession; and if you find that the tickets did
24 emanate from Mr. Gallo, you may infer that he possessed
25 them.

1 Fourth, and this is one of the really important
2 parts of it, that he knew that the goods were stolen,
3 and this involves a determination of knowledge, which
4 is a state of mind, but knowledge is something that
5 jurors can infer from circumstantial evidence; and if
6 a person closes his eyes to facts which would
7 definitely put him on inquiry, you will find that that
8 is the equivalent of knowledge.

9 And the fifth is not exactly an essential
10 element. The fifth is that the goods were worth more
11 than \$100. The statute provides different penalties
12 for possession of goods worth more than \$100 and
13 goods worth less than \$100. The defendant tried to
14 establish that the tickets are worth only two cents
15 or thirty-five cents apiece in their blank form. The
16 Government has shown what their value is on the basis
17 of the price that an airline should get for the trips
18 that were described on the tickets. You have a right
19 to find that the tickets were worth what they purported
20 to show on their face. I'll ask you in the formal
21 verdict to say first, whether the defendant is guilty
22 or not guilty on each count, and whether if you find
23 him guilty whether on a particular count you find
24 the value was under \$100.

25 The Government must establish each of the

1 elements of the crime beyond a reasonable doubt. You
2 can't infer the existence of one element from proof
3 of another element.

4 Now, there is a rule with respect to possession
5 of stolen goods, which is that possession of the fruits
6 of a crime recently after its commission justifies an
7 inference that possession is guilty possession, that
8 is, if somebody has stolen airline tickets or anything
9 stolen shortly after it was stolen, you can infer that
10 he knew they were stolen; and what is recent is a
11 matter for determination of the jury, there is no
12 fixed rule on this.

13 The time between February or April when some
14 of these were stolen, and May or June when it is
15 alleged that Mr. Gallo had them in his possession is
16 such if you find support there for an inference that
17 Mr. Gallo knew that they were stolen, but you don't
18 have to make such an inference.

19 And the knowledge may be explained away by
20 other evidence in the case; the inference may be
21 explained away by other evidence in the case if you
22 so determine.

23 With respect to what the witnesses paid for the
24 tickets, you may consider their testimony as bearing
25 on their credibility, but it's not necessary for the

1 Government to show what the actual purchasers paid.

2 The fact that they got a discount and Mr. Gallo, if he
3 sold them, sold them at a discount, is an inference of
4 knowledge that they were stolen, but the absence of
5 testimony or the inaccuracy of testimony by witnesses
6 as to what they were paid is not in itself a defect in
7 proof.
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The Supreme Court of the
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the method of evaluating the
generally speak of two types of
a jury can find the truth as to

One is direct evidence,
an eyewitness, and the other
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circumstances that logically
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Charge of the Court

direct evidence. That's eyewitness testimony, if you believe it. The evidence that Mr. Gallo subscribed to an airline guide is circumstantial evidence, which may lead to a chain of inferences to the idea that he did in fact have these tickets and filled in the amounts. The fact that his handprinting was not shown on three of the tickets may justify some inference that he never had possession of them or there is doubt about other testimony.

As a general rule, the law makes no distinction between direct and circumstantial evidence. Circumstantial evidence, to establish guilt, doesn't have to exclude every reasonable hypothesis of innocence. It's only a means that a jury be satisfied of a defendant's guilt beyond a reasonable doubt on the basis of all the evidence in the case, both direct and circumstantial.

Circumstantial evidence alone can be enough to convict if you find the defendant guilty beyond a reasonable doubt on the whole case. Circumstantial evidence involves the drawing of inferences and in analyzing evidence. You may draw reasonable inferences based on your own common sense and general experience, but only from facts that you find

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2 were proved. I would not use the word surmise, which
3 I think Government counsel did at one point. I think
4 he meant that it is a logical inference from what
5 happened but you can't go as far as speculation.
6 There is a line between what is guesswork and what is
7 logical inference from facts which you find are
8 proved.

9 A difficult aspect of your duty is to
10 determine the credibility of witnesses and weigh
11 their testimony, and this is the theory of our
12 criminal law, that twelve citizens selected as a
13 cross-section of the jury and screened as far as
14 possible to eliminate prejudice, can best determine
15 the truth of such charges. When you weigh the
16 testimony of various witnesses, there are a number
17 of factors that you should consider. First, the
18 relationship to the Government or to the defendant.

19 Second, their bias or interest in the outcome
20 of the case; third, their manner while they testify,
21 which includes their candor and intelligence as you
22 have observed it; and also the probability or
23 improbability of what they say; and finally, the
24 relationship of their testimony to other testimony
25 in the case. In this connection, you can consider

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2 the extent to which any testimony has been corro-
3 borated or contradicted by other credible evidence;
4 inconsistencies within the testimony of a witness on
5 direct or cross-examination, whether a witness has
6 changed his testimony. One of the rules is if a
7 witness lies the jury can say they won't believe
8 anything he says, but they can also say that part of
9 what the witness said is true and part is not; and
10 they can select what part is true and whether there
11 are inconsistencies in the testimony of a witness.
12 You could apply the same rule, either disbelieve it
13 entirely or select what seems to be true and what you
14 think is not sufficiently proved.

15 When you find an inconsistency, one of the
16 things you should consider is whether it relates to
17 a material fact or to a detail. If you consider your
18 own experience, listening to the same description of
19 the same incident by two or three people, or hearing
20 it from the same person more than once, you may find
21 that there are variations in detail, and you will
22 know whether that induces you to think that the
23 whole thing is fiction or there has been some
24 innocent negligence, misrepresentation in stating it.

25 We have at least one Government agent who

1 testified as a Government agent. We had a couple of
2 policemen who testified in a different manner, but the
3 rule with respect to Government agents is that a
4 witness who has testified is not entitled to any
5 greater credibility or any less credibility because
6 of the nature of his employment. His testimony
7 should be evaluated in the same manner as you would
8 evaluate the testimony of any other witness.

9
10 There is a rule with respect to using a
11 different name, where a person uses a name other than
12 his own. You may consider it as justifying an
13 inference that he was conscious of guilt, but you can
14 also determine whether from the circumstances there
15 is some innocent explanation and you don't have to
16 draw any such inference. That's part of the task
17 of a juror in evaluating evidence.

18 Mr. Truccio in this case was, what is called
19 an accomplice because he was assisting Mr. Gallo in
20 selling stolen airline tickets, if you believe his
21 testimony. An accomplice can testify even though
22 he is himself guilty of a crime, as Mr. Truccio
23 admitted by pleading guilty, and you can evaluate his
24 testimony. An accomplice's testimony should be
25 viewed with caution and received with care, and you

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2 shouldn't believe the uncorroborated testimony of an
3 accomplice unless you believe him beyond a reasonable
4 doubt, but you should view Mr. Truccio's testimony in
5 the light of the other circumstances of corroboration
6 which were mentioned by Mr. Cunningham in his
7 summation.

8 Mr. Truccio when he pleaded guilty very likely
9 anticipated that he would be called on to testify,
10 and that the fact that he was testifying might help
11 to prevent his receiving a jail sentence, which is
12 in fact what turned out, according to the testimony,
13 and you could consider whether he's lying because
14 he's grateful for having been granted a suspended
15 sentence; whether he's the kind of person who would
16 lie somebody into jail to protect himself, or whether
17 you're going to believe him. I can't tell you what
18 to do, that's your job.

19 There is no duty on the Government to produce
20 witnesses who are totally reliable or with whom you
21 would choose to deal on a daily basis, or with whom
22 you would want to have social involvement as may
23 have been said.

24 Attacking the Government witnesses. The
25 Government can't be restricted to law-abiding

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2 witnesses. If it is true that the tickets which were
3 purchased came from Mr. Gallo it's not your function
4 to punish the witnesses who testified for the
5 Government by disbelieving them because they lied
6 about whether they knew the tickets were stolen or
7 not; it's your function simply to find out Mr. Gallo's
8 guilt or reasonable doubt, not what should be done
9 or should have been done to Detective Garcia or any
10 of the other Government witnesses.

11 We have a special rule with respect to expert
12 witnesses. Generally a witness can testify only to
13 facts and not to his opinion, but where there are
14 matters that require special skill, an expert who
15 has skill in the field may testify, and Mr. Oberg
16 was proffered as a man who has experience in
17 analyzing handwriting and hand printing, and you
18 may give such credence to his testimony as you see
19 fit. You don't have to believe an expert. He may
20 be an expert but you are the fact-finders and you
21 can examine the basis for his expression of opinion
22 and the facts that underly and determine who much
23 credence to give it, much the same way as you do
24 with any fact witness. I would say that I don't
25 think there is any grounds to criticize him because

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2 he didn't reach a conclusion on the first set of
3 specimens. You may consider that as affecting his
4 reliability. You may consider it as being an element
5 of caution, with a man's liberty at stake. He wanted
6 to have as precise comparisons as he could before
7 expressing an opinion, or you may say that he just
8 wanted to have enough so he could nail this guy. As
9 I say, a Government witness is judged by the same
10 standards of credibility, agents are judged by the
11 same standard of credibility as other witnesses. The
12 defendant's counsel said it was an insult to your
13 intelligence to present the second report after the
14 first one. I think you should regard that as highly
15 verbal exaggeration by counsel. I did not consider it
16 an insult to my intelligence. I considered the
17 finding. The evidence that Mr. Oberg was not able
18 to reach a definite conclusion on the marked
19 exemplars, the credibility of the expert leaving it
20 for you to decide on the basis of the facts.

21 There has been reference to some witnesses who
22 weren't here. The Government has no obligation to
23 produce every possible witness.

24 If the Government has left that which leaves
25 a reasonable doubt in your minds, that is a basis for

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2 finding the defendant not guilty; and you can't guess
3 what some witness who wasn't here might have said,
4 if you find that the essential elements of the crime
5 have been proved by the witnesses who testified. You
6 shouldn't find a verdict of not guilty because there
7 might have been more witnesses brought in.

8 The Government produced a lot of witnesses and
9 the defendant none. The rule is you are not to
10 decide the case or any issue on the number of
11 witnesses or the number of questions, whether the
12 cross-examination was longer or shorter than the
13 direct examination. Your consideration depends on
14 the quality of the testimony, not the quantity.

15 You must determine the credibility of
16 witnesses. There were a couple of times when I
17 struck out evidence. You are to disregard any
18 evidence that I struck out. You are not to draw
19 any inference from any objections that were made or
20 sustained or overruled.

21 Consider the case only on testimony that came
22 in, the exhibits that I admitted in evidence, and
23 the stipulations of the parties that were placed in
24 the record.

25 I'm not going to comment at length on the

evidence because it's been pretty fully summarized.

What occurred to me as I listened to these Government witnesses, I can understand why we have in the Lord's Prayer, "Lead us not into temptation." There are all kinds of people who are led into temptation. I'm not sure they were truthful. When he said they didn't know that the tickets were stolen, that's not the issue. The issue is whether they got the tickets from Mr. Truccio and Mr. Truccio's testimony is that they got it from Mr. Gallo, as partly corroborated by Mr. Gallo's trips and Mr. Oberg's analysis of hand printing and some of the other circumstantial evidence that was mentioned persuade you beyond a reasonable doubt that Mr. Gallo is guilty.

The defendant has pointed out that there were three sets of tickets out of the nine counts that were not identified by Mr. Oberg as having been in Mr. Gallo's handprint, that's a factor to consider; not only with respect to those three counts but with respect to other counts if you find that there is any inference that carried over with respect to those counts.

Now, I've mentioned some evidence in the course

1
2 of my description of evaluation and in the course of
3 the present discussion. What I've said is not to be
4 taken as expressing any opinion on the guilt of the
5 defendant. It doesn't mean that some fact that I
6 didn't mention or counsel mentioned may not be
7 significant. You are the judges of the facts and
8 nothing that counsel said or anything that I say is
9 to prevent you from making the determination on the
10 facts on your own recollection of the evidence and
11 applying those facts to the law as I've set forth.

12 I come now to the matters of reaching a verdict.
13 Your verdict must be unanimous on each count. You
14 must all agree. If you don't agree it isn't a verdict.
15 It's wise to discuss the evidence rather fully before
16 taking a tentative vote so no one jumps to a hasty
17 conclusion before weighing the entire case.

18 Your recollection of the evidence governs but
19 if you want to have some of the testimony repeated,
20 make the request. We have the testimony of the first
21 three days I think transcribed, and we could bring
22 in the reporter and bring in anything that you think
23 is important as soon as we get people together and
24 find the exact place. If you want to look at any of
25 the exhibits, ask for them and they will be sent in

1
2 when you go into the jury room.

3 Mr. Eisner is your foreman, he should preside.
4 He should try to see to it that everybody has a chance
5 to speak, that not more than one person speaks at a
6 time, which is sometimes a difficult task.

7 During your deliberations you should assume the
8 attitude of judges of the facts, not partisans or
9 advocates. There should be no pride of opinion.

10 You should listen to other people's views and
11 not be afraid to change your mind if you find your
12 original opinion was wrong, but you don't have to
13 give up an opinion that you consciously believe just
14 because you find that you were in the minority.

15 Your verdict is to be truly the verdict of
16 twelve jurors. You should report a verdict on all
17 counts. You can find the defendant guilty on one
18 count and not guilty 8 or guilty on 9, and not guilty
19 on none or any combination of them.

20 When you reach a verdict the foreman should
21 give the marshal a note simply saying you have
22 reached a verdict. When he comes into the Court I'll
23 ask him to announce the verdict. I don't want it
24 orally. I'll hand up the form that I will give and
25 then the Clerk may poll the jury which is to ask

1
2 every one of you to make sure the verdict is unanimous
3 and properly expressed.

4 As I said before, when you're deciding guilt
5 or innocence, you don't give any consideration to the
6 matter of punishment. Whether it's suspended
7 sentence, fine. What it is to be is for my exclusive
8 consideration.

9 The marshal will be outside the jury room
10 door so that you could reach him if there are any
11 questions or any notes to hand up.

12 It is now ten minutes of 3:00, if you haven't
13 reached a verdict by 5:00 or 5:30 let me know whether
14 you think it's profitable to work late tonight, or
15 whether you want to be excused and come back tomorrow.
16 If you haven't reached a verdict you have to all
17 twelve be here. We are fortunate that we have all
18 fourteen jurors here. I'll now excuse the alternates,
19 Mr. Pyder and Mr. Wagner, while I send you into the
20 jury room, but I appreciate their being here but it
21 is an assurance that we don't waste the time, if we
22 only had twelve jurors to decide the case. There is
23 an anticlimax after I give my instruction, counsel
24 has an opportunity, out of your presence, to tell me
25 whether there is anything that I left out or anything

1
2 that I said wrong, and I may call you back in five
3 minutes if that is the case, but I will assume that
4 the matter is now in your hands ready for you to go
5 back in the jury room; and let me just say, the oath
6 you took at the beginning sums up your duty, that is
7 without fear or favor to any man you will well and
8 truly try the issues between the parties according
9 to the evidence given you in Court and the laws of
10 the United States.

11 Now, before you go in the Clerk swears in a
12 marshal to protect you from interference.

13 (Whereupon a marshal was sworn in open Court
14 by the Clerk of the Court.)

15 THE COURT: All right, take them into the
16 jury room, and the two alternates can go in and get
17 whatever belongings they have. Don't talk with
18 anybody on the jury, come right out and Mr. Gickas has
19 your cards and you could go right downstairs.

20 MISS COVAN: Take this jury verdict form to the
21 jury.

22 (Whereupon jurors were excused from the
23 courtroom.)

24 THE COURT: Mr. Cunningham, any exceptions?

25 MR. CUNNINGHAM: The only thing that I'll

1
2 mention, I'll leave it to your judgment. In charging
3 the jury, you stated that it was a hundred dollars
4 monetary amount. I think it is necessary, sir, to
5 advise the jury that it's not each ticket that much
6 be over \$100 but every ticket in the count cumulatively
7 must be valued over \$100.

8 THE COURT: I don't think it's necessary.
9 There were enough counts where there was well over
10 100 on each ticket. Mr. Worshor?

11 MR. WORSHOR: Yes, your Honor. Just two
12 exceptions to the Court's charge. Firstly, in
13 reference to the Court's, relative to my aspect of
14 the summation, more pertinently concerning the
15 caliber of witnesses called by the Government.

16 Second exception refers to that portion of
17 the Court's charge that related to comments made by
18 myself during summation relative to the expert and the
19 use of the three specimens. Other than that I have
20 no exception to the Court's charge.

21 THE COURT: I think they were proper comments,
22 and I believe my comments were balanced. I tried
23 always to say something on the defendants side as
24 well as the Government's side.

25 May I have a stipulation that exhibits may be

1
2 sent in whenever requested without reassembly.

3 MR. WORSHOR: I so stipulate.

4 MR. CUNNINGHAM: I would request that the
5 Clerk advise counsel.

6 THE COURT: Can the exhibits all be left at
7 the Clerk's table?

8 MR. CUNNINGHAM: They are on the table including
9 the defendant's exhibits.

10 THE COURT: I guess we all know that when
11 jurors ask questions they frequently come within the
12 first 20 minutes, so I would suggest that counsel stand
13 by.

14 MR. WORSHOR: We won't leave.

15 THE COURT: Thank you.

16 (Whereupon jurors began their deliberations.)

17 (Whereupon the Court stood in recess.)

18 (After recess.)

19 THE CLERK: Case on trial. Three notes marked
20 Court Exhibits 1, 2 and 3.

21 MR. WORSHOR: Can I comment on this note? I
22 do have a recollection that Mr. Cunningham had taken
23 the witness through the indictment count by count.

24 THE COURT: That was this morning.

25 MR. WORSHOR: I have a recollection that it

1
2 was done yesterday.

3 THE COURT: I think it was done twice.

4 MR. WORSHOR: I also have a recollection that
5 I in a sense took the witness through the indictment
6 with the exhibits on the blackboard, shortcutting the
7 day as I had started it yesterday. I don't really
8 know what the jury wants to hear.

9 MR. CUNNINGHAM: They are trying to find out
10 which tickets --

11 THE COURT: Let's go to yesterday. Start
12 from page 445 to 450, covers all the counts.

13 MR. WORSHOR: Your Honor, no doubt you are
14 accurate in your description of the pages. My
15 concern is from the tenor of the note I don't know
16 whether they just mean the direct testimony. I do
17 recollect that I commenced yesterday morning with
18 reference to each count of the indictment. It was
19 demonstrated by the blackboard. The recess occurred
20 because of some problem which was straightened out this
21 morning and I continued on to cover the remaining
22 counts of the indictment relative to which tickets
23 were written or were not written by Mr. Gallo.

24 THE COURT: I'm not sure that he identified
25 any as Mr. Gallo's in his March -- or was it May --

1
2 his first report.

3 MR. WORSHOR: I do believe if I could make a
4 conclusory statement; that using the March 28, 1974
5 exhibit, I think it's a defense exhibit C, D and E,
6 if I am correct. This conclusory statement is
7 accurate that the expert witness could not reach a
8 conclusion as to any of the counts of the indictment,
9 or the tickets in any of the counts of the indictment
10 as having been written by Mr. Gallo, but, of course,
11 that's a conclusory statement as addressed to what
12 they request.

13 THE COURT: Let me bring them in and find out
14 what they want.

15 MR. WORSHOR: Thank you.

16 THE COURT: Let's have the jury.

17 (Whereupon jurors enter courtroom and are now
18 seated in the jury box.)
19

20 (Continued next page)
21
22
23
24
25

1 THE COURT: Mr. Eisner, I have your note
2 asking for the testimony given by the expert as to
3 which tickets were written by Jack Gallo. On cross-
4 examination you testified that he could not reach a
5 definite conclusion of any on the basis of the
6 defendant's Exhibit C, D & E. Yesterday, he testified
7 as to all 9 counts what his opinion was based on,
8 K-1, K-2 and K-16. I have it here so perhaps I'll
9 read it. It's not very long beginning from page 445.

10 (Court reading transcript from page 445 to
11 page 450, questions asked by Mr. Cunningham.)

12 THE FOREMAN: We would like to know which count
13 these relate to and perhaps can I write it down?

14 MR. WORSHOR: Your Honor, might we have a side-
15 bar for a moment?

16 THE COURT: All right.

17 (Whereupon, a sidebar conference was had.)

18 MR. WORSHOR: I have a suggestion. It seems
19 to me they don't recollect. The 9 counts which were
20 identified as a handwriting -- this can take an hour.

21 THE COURT: Five minutes.

22 MR. WORSHOR: All right.

23 (Court resumes reading transcript from page 445
24 to 450.)

25 THE COURT: There is a lot more to his testimony.

1 if you want to hear it.

2 THE FOREMAN: No.

3 THE COURT: Thank you. Well, I'll get back to
4 chambers and work on other things.

5 (Whereupon, the jurors were excused.)

6 (Whereupon, Court stood in recess.)

7 (After recess.)

8 THE COURT: Bring in the jury.

9 (Whereupon, jurors re-entered courtroom and
10 are now seated in the jury box.)

11 THE COURT: I have your note saying that you
12 reached a verdict. I appreciate your diligence staying
13 so late. I've been busy all the time, it hasn't
14 bothered me. Will you tell us the verdict?

15 THE FOREMAN: I'd rather have you read it.

16 THE COURT: We, the jury, find Count 1 guilty;
17 Count 2 guilty; Count 3, not guilty; Count 4, guilty;
18 Count 5, guilty; Count 6, guilty; Count 7, guilty;
19 Count 8, guilty; Count 9, not guilty.

20 It is dated today's date and signed by the
21 foreman.

22 Will you please poll the jury, Mr. Giokas?

23 THE CLERK: Ladies and gentlemen of the jury,
24 as the Court has received your verdict, you say you
25 find the defendant guilty on Count 1; guilty on Count 2;

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

v.

No. 74 CR 822

JACK GALLO,

NOTICE OF APPEAL

Defendant.

-----X
S I R S :

PLEASE TAKE NOTICE that JACK GALLO hereby appeals to the United States Court of Appeals for the Second Circuit from a Judgment of Conviction entered against him by the Hon. ORRIN JUDD on August 1st, 1975, wherein the defendant was sentenced to one (1) year imprisonment, five (5) years probation and Two Thousand Five Hundred (\$2,500.00) Dollars fine.

Dated: New York, New York
August 6th, 1975

Yours, etc.

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